

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8509 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question [B of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DEPUTY EXECUTIVE ENGINEER

Versus

HARESH RATILAL PARIKH

Appearance:

1. Special Civil Application No. 8509 of 2000
MR DG CHAUHAN for Petitioner No. 1
MR UM SHASTRI for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/04/2002

ORAL JUDGEMENT

#. Heard Mr.D.G.Chauhan, learned advocate appearing on behalf of the petitioner and Mr.U.M. Shashtri, learned advocate for respondent No.1 as well as Mr.M.R.Shah, learned advocate for respondent No.2.

#. In the present petition, petitioner has challenged the award passed by the Labour Court, Godhara in Reference NO.120 / 1994 dated 30th July, 1999, wherein the labour court has granted reinstatement with continuity of service without backwages of the interim period. The labour court, Godhara has granted relief against the petitioner which has given rise to filing of this petition.

#. Learned advocate Mr.D.G.Chauhan appearing on behalf of the petitioner Board has submitted that the respondent workman was appointed in the year 1984 as daily rated employee and the respondent workman was appointed for repairing and maintenance of supply of the water in Godhara in summer season. It is further submitted that he was not appointed as Operator and after work was over, his services came to be terminated and as per the Labour Court award, one Operator Mr.C.P.Thakor was appointed by the Board and at present also he is performing his duties at Godhara Nagar Palika. Mr.Chauhan, learned advocate has submitted that during pendency of the Reference vide Exh.7 the respondent workman has given Purshis to join Godhara Nagar Palika as the party because the work has been handed over along with staff to the Godhara Nagar Palika as party in the Reference. Notice was served on the Godhara Nagar Palika vide Exh.15 and thereafter, request for adjournment was made and the same was granted by the labour court. Learned advocate Mr.D.G.Chauhan has also submitted that according to the Board, the entire administration along with staff has been handed over to Godhara and inspite of two notices vide Exh.9 and 26 served on Godhara Nagar Palika, none remained present on their behalf and no written statement has been filed by Godhara Nagar Palika, so also, no oral evidence led by Godhara Nagar Palika. Therefore, learned advocate Mr.Chauhan has submitted that it is undisputed facts between the respondent workman and the petitioner that entire work which was taken by the Board on behalf of the Nagar Palika from the very beginning and after completion of that, ultimately it was handed over to the Nagar Palika with effect from 1st December, 1993 along with staff and therefore, the respondent workman who was carrying out particular work relating to Godhara Nagar Palika of repairing and maintenance of the water supply and therefore, if at all, order of reinstatement is passed by the labour court, such order is required to be implemented by Godhara Nagar Palika who was party before the Labour Court. Learned advocate Mr.Chauhan has also submitted that after completion of said work and after handing over the work to Godhara Nagar Palika, now the

petitioner Board is not having any such work which can be performed by the workman concerned. Therefore, he submits that the labour court has committed gross error while not considering the oral evidence of the workman who deposed before the labour court that work of water supply and repairing, wherein the workman was working has already been handed over to Godhara Nagar Palika with effect from 1st December, 1993. Learned advocate Mr.Chauhan has also submitted that this contention was already raised by the petitioner before the Labour Court that now the scheme is not with the petitioner and it was handed over to the respondent No.2 and though two notices served on Godhara Nagar Palika, the municipality has not appeared before the labour court and therefore also, the labour court has committed gross error in granting relief in favour of the respondent workman against petitioner Board. Therefore, the submissions in short that the award is required to be quashed and set aside so far it relates to the petitioner.

#. On behalf of the respondent No.2, learned advocate Mr.M.R.Shah has filed affidavit-in-reply, wherein contention has been raised by the respondent No.2 that Municipality has taken over the charge and activities of the water supply and sewerage work from the petitioner Board in the year 1993 and the respondent No.1 was serving with the petitioner in the year 1984, whose services according to the respondent No.1 came to be terminated in the year 1985. Therefore, at the relevant time, when services of the respondent No.1 came to be terminated, neither the municipality has taken over the charge of water supply and sewerage work from the petitioner Board nor Godhara Municipality has appointed the respondent No.1 at any point of time and the respondent No.1 is not an employee of the respondent No.2 Municipality. Therefore, there is no question of granting any relief against the respondent No.2 and the labour court has rightly passed the award against the petitioner Board. It is further pointed out in the reply that at the relevant time, when the Municipality has taken over the charge and activity of water supply of the petitioner Board in the year 1993, the Municipality has continued the workmen and the officers of the petitioner Board on loan basis and the employees of the Board are sent back gradually to their parent department, meaning thereby to the petitioner Board and the Municipality has employed their own employees for the aforesaid work and activities. However, in the reply it is admitted that at present there are only four employees of the petitioner Board who are working with the Godhara Nagar Palika on loan basis and they are employees of the petitioner Board

and their salaries of even those employees are also paid by the petitioner Board and the petitioner Board is paying the same to the respondent No.2 - Municipality. It is further stated that even with regard to these four employees also, the preparation of service book, sanction of leave etc. is also done by the Board and they are the employees of the Board and they are in absolute control of the petitioner Board. Therefore, learned advocate Mr.M.R.Shah submits that the petitioner Board is having absolute control and power upon these workmen working with Godhara Municipality and therefore, the labour court has rightly passed the award in question.

#. Learned advocate Mr.M.R.Shah for respondent No.2 has over and above the contentions raised in the reply, has further submitted that it is not liability of the Municipality to reinstate the respondent No.1 workman as it was appointed by the petitioner Board and his services came to be terminated by the petitioner Board and at that relevant time, there was no relationship between the municipality and the workman as master and servant. Learned advocate Mr.Shah has also contended that the Reference has been referred by the concerned authority after period of eight years from the date of termination, meaning thereby, Reference was raised after eight years and even on the ground of delay also, the labour court should have rejected said Reference and said Reference cannot be adjudicated and that is how, the labour court has committed gross error in adjudicating the Reference and therefore also the Reference is not maintainable.

#. Learned advocate Mr.U.M.Shahstri appearing on behalf of the respondent No.1 - workman has submitted that the workman was working with the petitioner Board who was appointed by the Board as Daily Wager in the Scheme of Water Supply relating to the work of Godhara Municipality. It is further submitted that services of the respondent No.1 - workman came to be terminated by the petitioner Board on 12th January, 1986 and dispute was raised after period of eight years and referred for adjudication on 28th March, 1994. Learned advocate Mr.Shastri has also submitted that merely raising the dispute after period of eight years, cannot be cease the dispute and therefore, Reference cannot be rejected only on the ground of delay but the labour court can consider such delay at the time of granting the relief. He further submitted that the respondent No.1 who was working with the petitioner Board in repairing and maintaining the work of water supply and said work was handed over to Godhara Municipality along with staff in the month of December, 1993 and if the respondent No.1

was working with the petitioner Board at the relevant time, then he would have been transferred along with staff to Godhara Municipality but before that, his services was terminated and that is how the respondent No.2 was necessary party in light of the fact that entire work has been handed over to the respondent No.2 by the petitioner Board and therefore, the Godhara Municipality was joined as party and the labour court has passed the order to join the Municipality as party respondent No.2. Thereafter, two notices were served on the respondent but none appeared on behalf of the respondent Municipality and no reply was filed nor any oral evidence was led and no appearance was filed by the Godhara Municipality. Therefore, submission on behalf of the respondent No.1 workman that since the respondent Municipality has not remained present before the labour court, in such situation, the respondent municipality cannot raise such contention before this Court. Therefore, learned advocate Mr.Shashtri has submitted that stand taken by the Municipality is incorrect inasmuch along with scheme which has been handed over to Municipality, staff was also handed over to the Municipality. Therefore, after termination the scheme was handed over on 1st December, 1993 to the municipality, the order of reinstatement is required to be implemented by the Municipality. This fact has been made clear by the respondent workman in his oral evidence. Therefore, Mr.Shashtri, learned advocate submits that appropriate directions may be issued against the respondent municipality to reinstate the respondent No.1.

#. I have considered submissions of the learned advocates for the parties. It is undisputed fact that the respondent No.1 workman was working in maintenance and repairing of water supply department with the petitioner Board as Daily Wager. It has come on record that actually the respondent workman has worked with effect from 11th June, 1984 to 12th January, 1986. The respondent workman had worked for 162 days with effect from 11th June, 1984 to 15th December, 1984 and 300 days from 15th January, 1985 to 12th January, 1986. These details have been given by the labour court on the basis of the document Exh.23 produced by the petitioner Board. It is also undisputed fact that while terminating services of the respondent workman, Section 25-F of the I.D.Act has not been complied with by the petitioner Board. Therefore, considering this fact, view taken by the labour court so far it relates to violation of Section 25-F of the I.D.Act, 1947 while terminating the services of the respondent No.1 is legal and valid and therefore, no interference in such finding is required by

this Court and therefore, relief of reinstatement with continuity of service has been rightly granted by the labour court.

#. Now the question for consideration of this Court, whether award in question is required to be implemented by the petitioner or the respondent No.2. Looking to the contentions raised by the petitioner Board not disputed by Godhara Municipality in reply that the entire work means scheme has been handed over along with staff to Godhara Municipality on 1st December, 1993 and that work is now not available with the petitioner Board with effect from 1st December, 1993. Therefore, in light of these facts, when the respondent No.1 was working in the scheme of repairing and maintenance of water supply department and the entire work has been transferred and handed over to Godhara Municipality with effect from 1st December, 1993 and now the work is not available with the petitioner Board and therefore, considering this aspect and the second aspect that when the labour court has issued notices to the respondent Municipality vide Exh.9 and 26 received by the Municipality, none remained present nor any appearance was filed and no documentary or oral evidence produced by the respondent municipality disputing the claim of the respondent No.1 workman. Therefore, the labour court has rightly passed award granting relief of reinstatement with continuity of service without backwages of the interim period. In view of above facts, when no contention has been raised by the Municipality before the labour court, question of delay which has been raised before this Court, cannot be entertained. However, even if it is entertained, then also, clear answer is given by the Apex Court to the effect that mere delay does not cease the dispute and this aspect has been considered by the Labour Court at the time of granting the relief in favour of the respondent workman concerned. The Apex Court in case of MAHAVIRSINGH VS. U.P. STATE ELECTRICITY reported in 1999 II CLR pg.7 has considered this aspect and held that Reference was made by the workman after 9 years from the date of termination and merely delay in making Reference does not cease the dispute but the aspect of delay can be taken care of at the time of granting relief. Therefore, in view of the Apex Court decision, delay dispute remained in existence, it cannot be ceased and therefore, the delay aspect can be taken into account by the labour court at the time of granting relief, therefore, the Reference was maintainable. Therefore, contention of delay cannot be entertained by this Court and hence, the labour court has jurisdiction to adjudicate the Reference which has been raised for adjudication by the concerned

authority and merely on the basis of the delay, Reference cannot be rejected.

#. It is also contention raised by the learned advocate Mr.M.R.Shah that the other employees those who have been transferred to Municipality and working on loan basis and salary and disciplinary powers are with the petitioner Board, so also the salary to such employees are being paid to the Municipality by the petitioner Board and therefore, reinstatement cannot be implemented against Godhara Municipality. So far this contention is concerned, it has come on record that four employees of the petitioner Board are working with the respondent Municipality on loan service and their salary has been paid by the Board or having disciplinary control is with petitioner Board but the petitioner Board has no other powers for granting reinstatement to respondent workman as the entire work has been handed over to the Godhara Municipality on the same terms and conditions at the time of transferring the entire scheme or handing over the entire work to the Municipality. Therefore, the staff and the employees working in the scheme with the petitioner Board, are now transferred to Godhara Municipality - respondent No.2 herein. Therefore, obviously if the respondent had in the service of the petitioner Board, then the concerned workman would have been transferred to Godhara Municipality along with other employees. Therefore, since the labour court has passed the award directing reinstatement of the workman concerned, naturally the workman is entitled to reinstatement in Godhara Municipality.

##. In view of above undisputed factual aspects before this Court. Therefore, award passed by the labour court granting reinstatement with continuity of service without backwages of interim period against the petitioner is required to be quashed and set aside qua petitioner as the same is required to be implemented by the respondent No.2. Therefore, award passed by the labour court granting reinstatement with continuity of service without backwages of interim period against the petitioner is quashed and set aside qua petitioner and the same is required to be implemented by the respondent No.2. Accordingly, present petition is allowed. Rule is made absolute to the extent with directions to the respondent No.2 to reinstate the respondent No.1 in service with continuity of service without backwages of the interim period within period of one month from the date of receiving the copy of this order. It is made clear that on account of interim stay against the reinstatement granted by this Court vide order dated 2nd August, 2000

which has been subsequently modified by order dated 31st August, 2001 subject to compliance of Section 17-B of the I.D.Act, 1947, no wages has been paid by the petitioner or Godhara Nagar Palika to the respondent No.1 workman under Section 17-B of the I.D.Act. Therefore, it is directed to the respondent No.2 to pay full wages to the respondent No.1 workman from the date of award 31st July, 1999 till the date of actual reinstatement of the respondent No.1.

Rule is made absolute to the extent indicate hereinabove. Ad-interim relief, if any, stands vacated. Directions to be complied with accordingly. Direct Service to respondent No.1 is permitted.

Date : 24-4-2002 [H.K.Rathod, J.]

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